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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pays Service
Option in the Commercial Mobile
Radio Services

WT Docket No. 97-207

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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3/ Comments of Bell Atlantic; Bellsouth Corp. ("Bellsouth"); Bay Springs Telephone Co. et al. ("Bay Springs"); SBC Communications, Inc.; and United States Telephone Association

Inc. ("SBC") -- expressly stated that the Commission should not open a rule making proceeding on CPP.^{4/} Given the demonstrated interest in CPP among CMRS carriers, the Commission should adopt a Notice of Proposed Rule Making to solicit further industry input on the implementation of CMRS CPP services. As set forth below, Nextel fully supports the use of CPP services as a means of promoting the overall usefulness and efficiency of the telecommunications infrastructure in the U.S. and as a means of enhancing consumers' competitive choices for wireless services.

II. THE COMMENTS

Based on the comments filed in this proceeding, the Commission should find (1) that CPP services are of significant competitive interest to most CMRS carriers in the U.S., and (2) that cooperation between CMRS carriers and Local Exchange Carriers ("LECs") is required to properly implement CPP services. The Commission should exercise its authority over CMRS services to promote the voluntary implementation of such services and to require LEC cooperation in that process. A number of commenters, in fact, sought a Commission mandate requiring the LECs to participate in CMRS CPP services by billing the LEC customer for calls made to wireless users.^{5/} As Airtouch stated, LECs already provide such services for interexchange carriers and enhanced

("USTA").

^{4/} Comments of SBC at p. 2.

^{5/} Comments of Airtouch at p. 18; AT&T Wireless at p. 5; Motorola at pp. 2-3; Omnipoint at p. 7; Source One Wireless II ("Source One") at p. 7; US Cellular at p. 6; and Vanguard at p. 3.

service providers; therefore, there is no reason why they cannot provide similar services to CMRS carriers.^{6/} Without mandating LEC cooperation, wireless carriers argue, LECs will not provide the uniform support necessary for a ubiquitous CPP wireless service option.

LECs, on the other hand, are opposed to any Commission mandate requiring them to cooperate in CPP billing and collection with the CMRS carriers.^{7/} While they seem to agree with wireless commenters that the availability of CPP should be determined by the marketplace,^{8/} the LECs ignore the fact that their cooperation is critical to CPP availability, and they fail to address the need for CPP uniformity.^{9/}

Additionally, commenters raised jurisdictional issues related to the implementation and regulation of CPP services and associated consumer education/notification programs. The LEC commenters assert that the Commission has no jurisdiction over the LEC portion of the CPP service, i.e., the Commission has no jurisdiction over "LEC billing and collection" and therefore cannot mandate LEC CPP participation or regulate LEC charges for CPP billing.^{10/}

^{6/} Comments of Airtouch at p. 18.

^{7/} Comments of Bell Atlantic at p. 7; BellSouth at p. 1; SBC at p. 3.

^{8/} Comments of SBC at p. 7; United States Telephone Association at p. 2.

^{9/} Only US West agreed with other commenters that a national solution is most appropriate for CPP implementation. Comments of US West at p. 6.

^{10/} Comments of Bell Atlantic at p. 7; SBC at p. 3.

However, many more commenters assert that CPP is not a LEC billing and collection service; rather, it is a competitive CMRS service alternative that CMRS carriers can offer their customers. As a CMRS service, CPP would be wholly within the Commission's jurisdiction, thereby giving it jurisdiction over LEC services essential to the CPP offering.^{11/}

Nextel asserts herein that CPP services are CMRS services subject solely to Commission regulation under Section 332(c)(3)(A) of the Communications Act of 1934, as amended.^{12/} States are authorized to regulate only the "other terms and conditions" of these services.^{13/} The Commission should exercise its jurisdiction by requiring LEC cooperation in billing and collecting the CPP charges for CMRS carriers, implementing a nationwide consumer education/notification program, and allowing CMRS carriers to respond to marketplace forces in setting the rates that will be paid by callers making CPP calls to wireless users.^{14/} A uniform, nationwide implementation of CPP is critical to its usefulness and effectiveness in the U.S.

^{11/} See, e.g., Comments of CTIA at p. 13; Motorola at p. 8; and GTE at p. 5.

^{12/} 47 U.S.C. Section 332(c)(3)(A).

^{13/} *Id.*

^{14/} An additional source of Commission jurisdiction over LEC billing of wireless CPP is its authority over the terms and conditions of LEC-CMRS interconnection. See Comments of AT&T Wireless at p. 5; Motorola at p. 11; Sprint PCS at pp. 7-8. See also Iowa Util. Bd. v. FCC, No. 96-3321 (8th Cir. filed July 18, 1997) at fn. 21.

To date, some LECs have shown an unwillingness to provide the billing and collection services necessary for a CMRS carrier to offer its users CPP options.^{15/} SBC's comments, in fact, demonstrate the LECs' adverse position on CMRS CPP services, voicing strong opposition to the Commission's Notice of Inquiry and asserting that the Commission should not even proceed with a rule making.^{16/} Such express opposition to CMRS CPP services evidences exactly why the Commission should adopt national guidelines for CPP services and require LEC cooperation in providing consumers this beneficial CMRS service.

III. DISCUSSION

A. The Commission Must Ensure That CPP Is Available Uniformly Throughout The U.S.

As a national carrier, providing mobile telecommunications services in over 400 cities nationwide, Nextel supports the Commission initiating a rule making to ensure that CMRS providers can implement CPP. While Nextel agrees with the majority of commenters that CPP should succeed or fail based on marketplace decisions,^{17/} Nextel believes that a valid marketplace test requires that CPP be available on a consistent basis throughout the country. For example, Nextel's customers in New York City, whose interconnected telephone calls use Bell Atlantic exchange

^{15/} See Comments of Airtouch at pp. 18-21; GTE at p. 15; Omnipoint at p. 7.

^{16/} Comments of SBC p. 2.

^{17/} See, e.g., Comments of AT&T Wireless at p. 1; CTIA at p. 4; GTE at p. 10.

facilities, should have the same opportunity to choose CPP as Nextel's customers in Denver that interconnect with US West's local facilities. CMRS carriers must have the opportunity and ability to offer CPP services to all of their customers on the same terms and conditions, regardless of the particular geographic market. Thus, a Commission rule making to require consistent LEC CPP billing and administrative capabilities would prevent customer confusion and maximize the consumer benefits of CPP.

A number of commenters support this position.^{18/} To achieve uniform regulation, AT&T Wireless asserts that the states must not be permitted to regulate CPP services.^{19/} CTIA argues that the Commission should view any attempted state CPP regulation as prohibited entry regulation of CMRS services, and preempt it.^{20/} Therefore, to make CPP a viable alternative and to give it an opportunity to succeed in the marketplace, the Commission must assert its jurisdiction and provide consistent national guidelines for CPP services. Offering a service that is only available in certain parts of the country -- for no other reason than an inability to obtain intercarrier cooperation -- is not in the public interest and would not provide consumers the potential benefits to be achieved from CPP services. The Commission must

^{18/} See, e.g., Comments of AT&T Wireless at p. 6; Cellular Telecommunications Industry Association ("CTIA") at p. 6, 12; Motorola, Inc. ("Motorola") at p. 2, 8; United States Cellular ("US Cellular") at p. 6; US West at p. 6; and Vanguard Cellular ("Vanguard") at p. 12.

^{19/} Comments of AT&T Wireless at p. 6.

^{20/} Comments of CTIA at p. 15.

ensure that there are no regulatory or private barriers to implementing CPP.21/

Moreover, to prevent customer confusion, the Commission should establish national guidelines governing the appropriate CPP customer notification process.22/ Not only would a single form of notification help to ensure that customers are not confused by a particular tone or message when making telephone calls to CPP users,23/ but the single notification process also would reduce the administrative burden of implementing the process on large, nationwide and regional systems.

Specifically, Nextel supports CTIA's notification proposal, wherein callers would be informed for an interim period via the use of a complete message, explaining the CPP service, that the caller will be charged for completing the call and that the caller has the opportunity to hang up and avoid the charge.24/ This message, however, should not be required to include the exact rate, terms and conditions of the individual call. Such specific information would add to the complexity of the notification process, would significantly increase the administrative expenses related to CPP

21/ See Comments of GTE at p. 12; AT&T Wireless at p. 3.

22/ See, e.g., Comments of Sprint PCS at p. 11.

23/ For example, if different areas of the country implemented differing notification systems, consumers in Texas would have no reason to understand the notification process in Colorado. If the two notification processes are different, a consumer traveling in one area or the other may be charged for a call it otherwise would not have completed had it been properly informed.

24/ Comments of CTIA at p. 6.

services and could potentially discourage use of CPP as callers would be forced to listen to a lengthy message prior to each wireless phone call, thereby slowing call processing.

After an interim period, as suggested by CTIA, consumers should be informed of CPP calls via a tone (consistent throughout the U.S., regardless of the LEC providing the interconnection). This tone would provide the caller notice that the call is to a wireless subscriber that has chosen CPP service, and that the caller can either hang up to avoid the charge or complete the call and accept the charge. The caller should be required to take affirmative action, e.g., press "#" or "1," to accept the charge, thus minimizing billing disputes and establishing a relationship between the caller -- having agreed to pay the charge -- and called party's wireless carrier.

B. CPP Is a CMRS Service Wholly Within the Jurisdiction of the Commission

Pursuant to Section 332(c)(3)(A) of the Act, states are preempted from regulating the rates and entry of CMRS. Therefore, as a CMRS service, CPP is a service subject to the Commission's jurisdiction.^{25/} CPP rates -- like all other CMRS rates today - - should be determined by competition.^{26/} Allowing state

^{25/} See, e.g., Comments of CTIA at p. 13; Motorola at p. 8; Centennial Cellular Corp. at p. 3; PCIA at p. 3; GTE at p. 5; and Sprint PCS at pp. 7-8.

^{26/} Contrary to the claims of Bay Springs, marketplace forces will protect wireline customers paying CPP-based rates from unjust and unreasonable prices -- just as the marketplace protect all other consumers paying for CMRS services. See Comments of Bay Springs at p. 4.

regulation of CPP rates would create distortions in the marketplace as CMRS carriers potentially would be forced to charge different rates in each state, to file tariffs for this single service (while not filing tariffs for other CMRS services) and thereby incur additional costs for providing CPP services, thus unnecessarily increasing their cost to consumers. State regulation of CPP, moreover, could potentially discourage CMRS carriers from choosing to offer this service to their customers -- a result that is not in the public interest.

CPP is merely a CMRS rate plan or option, not unlike CMRS packages offering free weekend airtime or a pre-established number of minutes per month for a specified fee. Moreover, CPP is a CMRS service because, as GTE points out, it is provided on the CMRS network.^{27/} Consumers will derive the greatest benefit from CPP rate plans that allow CMRS carriers significant flexibility to offer the service when it is economically efficient, when it is necessary to meet the demands of the marketplace, and at prices that are established by competitive forces.^{28/}

III. CONCLUSION

CPP services offer a potential benefit to wireless telecommunications users. As a CMRS service, CPP is solely within the jurisdiction of the Commission and should be implemented on a national uniform basis, with uniform customer notification

^{27/} Comments of GTE at p. 6.

^{28/} See, e.g., Comments of BellSouth at p. 2; Motorola at p. 19 (CPP rate regulation would distort the marketplace and inhibit wide-spread CPP deployment).

requirements and nationwide LEC cooperation pursuant to Commission rules.

For these reasons, Nextel urges the Commission to initiate a Notice Of Proposed Rule Making consistent with the comments above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", is written over a horizontal line.

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Date: January 16, 1998

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 16th day of January 1998, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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